U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 1 8 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a communications business. It seeks to employ the beneficiary permanently in the United States as a senior software engineer/IPA software pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not meet the job qualifications stated on the labor certification. The labor certification required a bachelor's degree and 84 months of experience as a senior software engineer or in a related position. The director determined that the petitioner failed to establish that the beneficiary meets the experience requirements of the position.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner has submitted evidence to show that the beneficiary possesses a U.S. bachelor's degree in computer science. The petitioner has also submitted employment letters pertaining to the beneficiary's work experience. The issue in this case is whether the petitioner has established that the beneficiary has the work experience required by the ETA Form 9089.

As noted above, the DOL certified the ETA Form 9089 in this matter. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified, and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the labor certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Evidence of qualifying experience shall be in the form of letters from former employers which include the name, address, and title of the writer and a specific description of the duties performed. If such evidence is unavailable, other documentation relating to the experience will be considered. 8 C.F.R. § 204.5(g)(1).

In this matter, Part H, Line 4, of the labor certification reflects that a bachelor's degree in electrical engineering, computer engineering, computer science or a related field is the minimum level of education required. Line 10 reflects that 84 months of experience as a senior software engineer or in a related position is required for the job. On Line 11, the petitioner described the job duties of the position.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's 84 months of work experience, in addition to his experience with the petitioner,[1] he represented the following:

- That he was employed by [redacted] as a "systems analyst" from June 27, 2006 to January 2, 2008, and described his job duties.

[1] The beneficiary claims to have been employed by the petitioner in the job offered beginning on January 7, 2008. The duties of this position (Part K, Job 1) are identical to the duties of the proffered position (Part 11, item 11). As the petitioner claimed in J.21 of the ETA Form 9089 that the beneficiary did not gain any of his qualifying experience with the petitioner in a substantially comparable position, this experience may not be considered in determining whether the beneficiary has 84 months of experience before the priority date.

- That he was employed by as a "QA Engineer" from April 21, 2003 to May 12, 2006, and he described his job duties.

- That he was employed by as an "application developer" from July 2, 2001 to March 28, 2003, and he described his job duties.

- That he was employed by as a "software engineer" from August 24, 1998 to June 28, 2001.

The petitioner submitted the following employment letters:

- A letter dated August 5, 2010 from a claimed program manager of who stated that the company employed the beneficiary full-time through as a technical lead/supervisor from June 27, 2006 to January 2, 2008. The declarant described the beneficiary's job duties. The declarant stated that he was the beneficiary's technical lead/supervisor.

- A letter dated August 5, 2010 from an office manager of who stated that the beneficiary worked at through as a systems analyst from June 27, 2006 through January 2, 2008. The declarant does not provide a description of the beneficiary's job duties.

- A letter dated October 11, 2006 from the Sr. HR Consultant of who stated that ' was currently employed by the company and that his initial start date was November 11, 2002. The beneficiary is not named as an employee in this letter. The declarant fails to describe the job duties or to specify the length of employment. The start date differs from that noted by the other declarant in the letter dated November 11, 2009.

- A letter dated November 11, 2009 from a co-worker who stated that he was the beneficiary's colleague and that the beneficiary was employed by as a quality assurance engineer from April 21, 2003 to May 12, 2006. The declarant described the job duties. The declarant does not indicate that he was the beneficiary's supervisor or manager or the source of his knowledge of the beneficiary's employment.

- A letter dated June 28, 2011 from who stated that employed the beneficiary full-time as an application developer from July 2, 2001 to March 28, 2003 and that during that time he was the beneficiary's manager. The declarant described the beneficiary's job duties. The letter is not on company letterhead, and the declarant describes his position as "systems analyst," not as a manager.

- A letter dated November 10, 2009 from a senior software engineer of who stated that the company employed the beneficiary full-time as a member of technical services from August 24, 1998 through June 28, 2001. The declarant stated that he was the beneficiary's colleague during this time. The declarant described the beneficiary's job duties. The declarant does not indicate that he was the beneficiary's supervisor or manager or the source of his knowledge of the beneficiary's employment.

- A letter Dated October 27, 2000 from of the HR department who stated that the beneficiary was employed by as a software engineer. The declarant fails to specify the beneficiary's job duties. The declarant also fails to specify the dates during which the beneficiary was employed by the company and whether he was employed full-time.

- A letter dated June 16, 2011 from a human resources specialist from who stated that the company employed the beneficiary as a member of its technical staff in the business unit full-time from September 1, 1998 to April 13, 2001. The declarant fails to specify the beneficiary's job duties.

- A letter dated June 23, 2011 from a co-worker who stated that the beneficiary was employed by from September 1, 1998 to April 13, 2001 as a member of the technical staff and that during this time the declarant was the beneficiary's colleague. The declarant also stated that in his previous letter dated November 10, 2009, he misstated the beneficiary's employment dates and that the beneficiary's employment dates have now been confirmed by the company's HR department. The declarant further stated that the beneficiary's duties remain the same. The declarant does not indicate that he was the beneficiary's supervisor or manager or the length of time he worked with the beneficiary.

The letters submitted as evidence of the beneficiary's work experience are not sufficient to establish that he had at least 84 months of experience performing the duties of the job offered. As noted above, evidence of qualifying experience shall be in the form of letters from former employers which include the name, address, and title of the writer and a specific description of the duties performed. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, other documentation relating to the experience will be considered. *Id.* In this matter, the beneficiary claims to be qualified for the offered job because he had 84 months of work experience with and Although the petitioner submitted two letters from office managers pertaining to the beneficiary's employment with confirming the beneficiary's employment at the letters

failed to specifically describe the beneficiary's job duties. The employment letter from the beneficiary's co-worker at [redacted] is insufficient to establish that the beneficiary is qualified for the job offered in that the letter is not from a former employer as required by 8 C.F.R. § 204.5(g)(1). In addition, the employment letter from the Senior HR Consultant of [redacted] described [redacted], not the beneficiary, as a former employee of the company and the employment dates are inconsistent with those dated noted by the beneficiary's alleged co-worker in his letter dated November 11, 2009. Three of the five employment letters indicating that the beneficiary was employed by [redacted] were written by co-workers. Although other documentation will be considered when a letter from the former employ is unavailable, the fact of unavailability has not been established in this matter. Furthermore, the two employment letters written by members of [redacted] HR department fail to specifically describe the beneficiary's job duties.

Accordingly, it has not been established that the beneficiary has the requisite 84 months of work experience or that he is qualified to perform the duties of the proffered position. 8 C.F.R § 204.5(g)(1).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.